

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION

CATHERINE ALEXANDER,

Plaintiff,

vs.

No. 3:18-cv-966-MJR-DGW

TAKE-TWO INTERACTIVE SOFTWARE, INC.,
2K GAMES, INC.; 2K SPORTS, INC.; WORLD
WRESTLING ENTERTAINMENT, INC.;
VISUAL CONCEPTS ENTERTAINMENT;
YUKE'S CO., LTD.; AND YUKE'S LA, INC.,

Defendants.

VIDEOTAPED DEPOSITION OF JOSE ZAGAL

August 1, 2019; 8:02 a.m.

St. Louis, Missouri

Reported by:

Kelli Ann Willis

Job no: 25723

1 on a specific study that was done. If someone
2 else were to have my same knowledge and
3 experience and they read the same things as me,
4 would they have the same opinion? That's what
5 I --

6 BY MR. SIMMONS:

7 Q. Just for the record, that is no, right?
8 Would they have the same opinion? No, not
9 necessarily?

10 A. I don't know.

11 Q. Because there isn't something that was
12 done that could be redone again, right?

13 MR. FRIEDMAN: Objection, form. Asked and
14 answered.

15 THE WITNESS: I would say no, because we
16 don't have the methods to be able to answer
17 that question at the moment.

18 BY MR. SIMMONS:

19 Q. Okay. You believe that the Defendants in
20 this case expected that use of tattoos on Mr. Orton
21 in the WWE 2K games at issue in this case would
22 drive sales and increase profits to some extent,
23 right?

24 A. I believe that they expected that the
25 inclusion of Randy Orton in the games the way he

1 looks in real life would drive sales, yes, to a
2 certain degree or extent.

3 Q. But you don't reach the issue of whether
4 the use of the tattoos was part of that, right?

5 A. I believe if the tattoos were wrong, that
6 would -- I believe in my report, I state that if his
7 tattoos were wrong, as in not the way they look on
8 Randy Orton, the person, then that would have a
9 negative effect on sales.

10 Q. But your -- just to be clear, your
11 opinions don't extend to whether the tattoos alone,
12 leaving aside this overarching verisimilitudinous
13 question, drives sales or increases profits in the
14 games at issue in this case, right?

15 A. You're asking if I comment on that in my
16 report?

17 Q. I'm asking if you reached an opinion on
18 it.

19 A. In the sense that the tattoos are part of
20 Randy Orton's character, I think they matter.

21 Q. But leaving aside the verisimilitudinous
22 issue of their being the same as what exists in the
23 real world, you didn't reach a conclusion about the
24 tattoos as works of art and whether they drive sales
25 or lead to profits of the games at issue in this

1 case, right?

2 A. I don't believe I commented in my report
3 on whether or not tattoos specifically, only by
4 themselves, devoid of any context, drives sales.

5 Q. You believe that video game fans and
6 prospective buyers of WWE 2K games care about
7 Mr. Orton's appearance in the games at issue, right?

8 A. Broadly speaking, yes.

9 Q. What is your basis for that opinion?

10 A. Again, my broad knowledge of the industry,
11 and specifically, in the report, I think I provide
12 some examples of fans caring about Mr. Orton's
13 appearance in the game specifically.

14 Q. So other than the examples cited in your
15 report, you didn't conduct a larger study, right?

16 A. No, I did not conduct a large-scale study.

17 Q. And do you remember that the number of
18 instances discussed in your report is about less
19 than 10?

20 A. I would have to look at the report to
21 answer that specifically.

22 Q. But it is not -- it is not a high volume,
23 right?

24 A. What do you mean by "high"?

25 Q. Well, you understand that to draw